

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

CONVOLVE, INC.

vs.

DELL, INC., ET AL

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CASE NO. 2:08-CV-244-CE

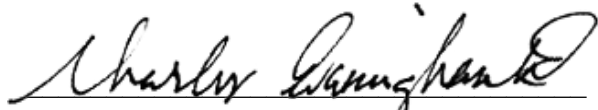
**ORDER**

Pending before the court is plaintiff Convolve, Inc.’s (“Convolve”) motion to compel defendant Hitachi Global Storage Technologies, Inc. (“Hitachi”) to supplement its interrogatory responses and produce deposition witnesses (Dkt. No. 272). Among other things, Convolve requests that the court compel Hitachi to produce a Rule 30(b)(6) witness(es) for deposition in the United States to testify regarding topics 5-7, 9, and 12-15 of Convolve’s second 30(b)(6) notice of deposition and topics 2-5 of Convolve’s third notice of deposition. In response, Hitachi notes that, since June 2010, Convolve has known of Hitachi’s position that Rule 30(b)(6) witnesses on these topics must be produced in Japan. Given that Convolve delayed in noticing depositions on these topics until February 2011, Hitachi argues that the court should deny Convolve’s motion to compel. Furthermore, Hitachi argues that, in light of the ongoing crisis arising from the tsunami that hit Japan in March 2011, it is not reasonable to ask its Japanese 30(b)(6) witnesses to leave their families and come to the United States for deposition, even if they were willing to do so.

The court concludes that Convolve is entitled to depositions on the subjects it has noticed, and therefore, **ORDERS** Hitachi to designate a Rule 30(b)(6) witness(es) to testify regarding topics 5-7, 9, and 12-15 of Convolve’s second 30(b)(6) notice of deposition and topics

2-5 of Convolv's third notice of deposition. The court, however, recognizes the hardship Hitachi's 30(b)(6) witnesses residing in Japan will face if forced to travel to the continental United States for depositions. Depositions in Hawaii would reasonably accommodate both parties, in light of Convolv's delay in noticing depositions, Hitachi's failure to produce all of its source code in a timely manner, and the crisis in Japan caused by the tsunami. As such, the court ORDERS Hitachi to produce the witness(es) it designates in Hawaii at a mutually agreeable time and date during the week of either July 4, 2011 or July 11, 2011. The court will issue a separate order addressing Convolv's motion to compel Hitachi to supplement its interrogatories.

SIGNED this 28th day of June, 2011.

  
CHARLES EVERINGHAM IV  
UNITED STATES MAGISTRATE JUDGE